

CITY OF DELTA JUNCTION, ALASKA

ORDINANCE NO. 2006-06

**AN ORDINANCE APPROVING A MEMORANDUM OF AGREEMENT
WITH U.S. ARMY ALASKA AND PROVIDING
FOR AN EFFECTIVE DATE**

The City Council of the City of Delta Junction, Alaska, finds that:

- A. The City and the Deltana area are bounded on the southeast by the Fort Greely East Training Area, also known as the Donnelly Training Area East.
- B. The United States Army Alaska ("USARAK") has, since 2001, sought to expand the Donnelly Training Area by constructing range expansion facilities, called a Combined Arms Collective Training Facility ("CACTF") and a Battle Area Complex ("BAX") in the Eddy Drop Zone.
- C. The City has resisted the efforts of USARAK to construct new training facilities at a site so close to the City.
- D. As a part of those efforts by the City to resist that construction the City has
 1. Objected to the initial Environmental Assessment and Finding of No Significant Impact;
 2. Litigated with USARAK regarding the adequacy of that Environmental Assessment and Finding of No Significant Impact, reaching a favorable settlement;

3. Submitted extensive and detailed objections to a subsequent Draft Environmental Impact Statement submitted by USARAK; and

4. Submitted initial objections and concerns to a Supplemental Draft Environmental Impact Statement ("SDEIS") submitted by USARAK on March 17, 2006; and

5. Retained a hydrologist to investigate the Jarvis Creek flood plain and the risks presented by construction of the BAX on that flood plain.

E. The City, through the use of the National Environmental Policy Act ("NEPA"), cannot prevent USARAK from proceeding with construction of the CACTF and BAX. The City can only attempt to force USARAK through multiple iterations of environmental impact statements.

F. The proposed BAX would be located in the Jarvis Creek flood plain. Under federal Executive Order 11988, USARAK cannot build the BAX in the Jarvis Creek flood plain unless there is no practicable alternative.

G. USARAK has issued a Draft Finding of No Practicable Alternative ("FNPA") concluding that there is no practicable alternative to constructing the BAX in the flood plain. In the view of the City, that FNPA is flawed because it fails to consider construction in the Donnelly Drop Zone.

H. However, if the City were to challenge the FNPA in court, the court would review USARAK's determination under an extremely deferential standard, making it difficult for the City to effectively challenge the FNPA.

I. USARAK plans to begin construction of the CACTF and BAX this fall. The City has the ability to challenge USARAK's proposed construction schedule through a NEPA challenge, but only for the time it would take for USARAK to amend the SDEIS.

J. The City has at all times believed and continues to believe that construction of the CACTF and BAX creates unreasonable risks and dangers to the City and Deltana. But the City also recognizes that it is unlikely to be able to protect the City and Deltana through continued litigation with USARAK.

K. Rather than litigate further with USARAK, and lose the remaining leverage that the City may have under NEPA and E.O. 11988, the City has entered into negotiations with USARAK in an effort to obtain an agreement that would mitigate the risks and harms to the City associated with construction of the CACTF and the BAX in the Eddy Drop Zone.

L. As a result of those negotiations, the City has reached a proposed agreement with USARAK for limited mitigation of some of the known risks. The proposed agreement is less than ideal from the City's view, but represents the best agreement the City is likely to obtain under the circumstances.

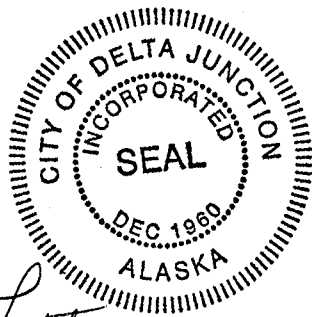
M. The City believes that a written agreement with USARAK, in the long run, is likely to be more useful than any probable outcome of the litigation. A written agreement is likely to make for a better relationship between the City and USARAK.

NOW, THEREFORE, be it enacted by the City Council of the City of Delta Junction:

1. The Memorandum of Agreement between the City and USARAK is APPROVED.
2. The City shall continue to monitor the NEPA process to make certain that critical remediation and mitigation items described in the SDEIS are incorporated into the Record of Decision and final NEPA documents.
3. Except as set forth in Paragraphs 23 and 24 of the Memorandum of Agreement, nothing in this ordinance or in the Memorandum of Agreement is a waiver, release or surrender by the City or any citizen of the City or Deltana of any claims that may arise in the future if activities of USARAK in the Donnelly Training Area damage, adversely impact or impair the life, safety, or property of the City, citizens of the City, or citizens of Deltana.
4. Nothing in this ordinance or in the Memorandum of Agreement releases or purports to release the rights of any citizen of the City or Deltana to pursue rights and remedies under any applicable law.
5. This ordinance shall take effect immediately upon enactment.

Introduction:	May 2, 2006
First Reading:	May 2, 2006
Public Hearing:	May 16, 2006
Second Reading:	May 16, 2006
Adoption:	May 16, 2006

ADOPTED this 16th day of May 2006 by an affirmative vote of 7 to 0.



ATTEST:

Pat White
Pat White, City Clerk

Thomas "Roy" Gilbertson
Thomas "Roy" Gilbertson, Mayor